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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,497	01/15/2002	Didier Dutarte	S01022.80704	7314

7590

08/08/2003

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EXAMINER

ANDERSON, MATTHEW A

ART UNIT

PAPER NUMBER

1765

DATE MAILED: 08/08/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/902,497

Applicant(s)

DUTARTRE ET AL.

Examiner

Matthew A. Anderson

Art Unit

1765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 09/124,825.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *in re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 10 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,162,706 in view of Wolf et al. (Silicon Processing for the VLSI Era Volume 1: Process Technology, Lattice Press, Sunset Beach, CA, USA, pp.124-159, 242-279, 1986.).

Claim 1 of the patent discloses a method of vapor phase epitaxy of Si on Si including dopants (among which is arsenic) at high concentrations while avoiding auto-doping effects including the steps of performing epitaxial deposition, annealing afterwards, and then performing a second epitaxial deposition. The conditions during the first epitaxial and the anneal steps are controlled to affect the diffusion lengths of the dopants to be lower than the thickness of the first epitaxial layer.

Wolf et al. discloses auto-doping effects during Si epitaxial deposition (page 137-139) and the theory of diffusion in Si (chapter 8). Diffusion is known to be affected by temperature and concentration (see Chapter 8 discussions of the 1<sup>st</sup> and 2<sup>nd</sup> Fick's Law). Discussed in both places are common dopants including arsenic, boron, phosphorous, and ways of limiting auto-doping.

Motivation to combine the common art knowledge of Wolf with the patent disclosure would have been obvious to one of ordinary skill because diffusion of dopants in Si would have been anticipated to follow the known Fick's Laws and prior observation.

In respect to application claim 10, it would have been obvious to one of ordinary skill in the art at the time of the present invention that the dopants of the patent which specifically include arsenic cover the general claim of "dopants" since arsenic was, and still is, an extremely common dopant (see Wolf). The examiner also notes that the application claims do not exclude arsenic.

In respect to application claims 11-19, one of ordinary skill in the art at the time of the present invention would have found these claims obvious from the patent claims 2-10, respectively, because they are either word-for-word or otherwise equivalent in meaning.

In respect to application claim 20, it would have been obvious to one of ordinary skill in the art at the time of the present invention to optimize the temperature of the epitaxial deposition since this is suggested by both Wolf (in diffusion discussions) and in patented claim 3.

In respect to application claims 21-29, it would have been obvious to one of ordinary skill in the art at the time of the present invention to optimize the process parameters of temperature and time because both were known (see again Wolf et al. Chapter 8) to have a direct bearing on the diffusion and thus auto-doping of Si and such optimization would have had expected results (see Wolf et al. pages 251-256) with only routine experimentation. The examiner notes that time also effects the thickness of the epitaxial layer and thickness of the 1<sup>st</sup> epitaxial layer is suggested in patented claim 4.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew A. Anderson whose telephone number is (703) 308-0086. The examiner can normally be reached on M-Th, 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nadine Norton can be reached on (703) 305-2667. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

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MAA

August 6, 2003

*Matthew Anderson*

*AV. 1765*